

IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

FILED
December 17, 1998
Cecil Crowson, Jr.
Appellate Court
Clerk

ROBERT E. BANKS and wife,) C/A NO. 03A01-9807-
CV-00213)
DOROTHY BANKS,)
) POLK CIRCUIT
)
) Plaintiffs-Appellants,)
)
) HON. JOHN B. HAGLER, JR.,
v.) JUDGE
)
) POLK COUNTY, TENNESSEE,)
)
) ET AL.,) AFFIRMED
) AND
) Defendants-Appellees.) REMANDED

JAMES F. LOGAN, JR., LOGAN, THOMPSON, MILLER, BILBO, THOMPSON & FISHER, P.C., Cleveland, for Plaintiffs-Appellants.

DAVID F. HARROD, CARTER, HARROD & CUNNINGHAM, Athens, for Defendant-Appellee, Polk County.

OPINION

Franks, J.

Plaintiffs' action to rescind a deed granted to defendant county for construction of a road across plaintiffs' property, and/or for damages for breach of contract, was dismissed by the Trial Judge at conclusion of plaintiffs' proof, and plaintiffs have appealed.

At trial, plaintiff Banks testified that he was approached by Lynn McGee, the Road Superintendent for Polk County, about the possibility of building a road across the Banks farm. Banks agreed to let McGee build a road across the farm, and plaintiffs gave the County a 50 foot right-of-way through the farm. Banks testified that McGee told him that "they were going to build a standard road all the way through my property, but I would have to pay for surveying of the road and deed

the land to them, and that's what I did".

The road was not constructed to Banks' satisfaction, and he testified he went to a County Commission meeting and told them "I paid for this surveying and I'll pay the \$6,000.00 back, provided you take it in and complete it to a county road to specifications". He conceded the County accepted his offer, but charged it never completed the roadway to specifications.

Hoyt Firestone, the County Executive, testified that Banks came before the County Commission in October 1995, and made a proposal to settle the dispute, but he is not "even sure the Commission fully understood what the proposal was". The Commission meeting minutes for October stated that the offer was accepted. Between the October and November meetings, Banks submitted a proposal in writing which stated:

Robert Banks and his wife propose to deliver to Polk County a deed conveying the property described in the attached deed which was prepared pursuant to a survey made by Cleveland Surveying company of the roadway which had been constructed by the Polk County Road Department across the Banks' property. This proposal includes an offer to pay unto Polk County the sum of Six Thousand Dollar (\$6,000) in addition to conveying to Polk County the property for the completion of a roadway upon said property as described in the attached survey and deed. The proposal of the Banks is that the acceptance by the Polk County governing body of this proposal would result in a full and final settlement of all claims between Polk County and the Banks concerning the construction of the roadway described.

The deed from the Banks to the county states the deed was given "[p]ursuant to an agreement that Polk county, by and through its Highway Department, its officials, agents, servants and employees, may enter upon, construct, improve, repair and open said public road; and stipulated that grantors hereby waive and quitclaim any and all other compensation or damages caused thereby." The Commission meeting for October reflects in the minutes that the offer was accepted without objection.

McGee testified that the proposal put forth by Banks did not involve putting any pavement or tar and chip down on the road. He testified that he told the

County Commission that the road needed more rock on it, because it did not meet the standards for a County road. He also said the agreement between the County and Banks was to put more rock on the road. He stated this is not the “worst” gravel road in Polk County.

In December 1995, Banks hired a professional land surveyor to survey his land and divide it into a subdivision. After the plats were prepared, Banks went before the County Planning Commission to request approval of the subdivision proposal. In return, Banks received a letter denying the approval of the subdivision proposal “due to the fact that the portion of Thomas Road serving this development is an unapproved County road. Until the road serving this development is upgraded to County standards, per the Polk County Subdivision Regulations, and approved and recommended by the PCRPC to the Polk County Commission for their approval and acceptance, the denial of this plat will remain in effect.” After the rejection letter, Banks did not appear before the County Commission.¹ to request acceptance of the road in its substandard condition. Instead, this action was filed against Polk County and McGee.

At trial, after the plaintiff rested, defendants filed a Motion to Dismiss. The Trial Court deferred ruling on this Motion until the defendants’ proof was heard, but neither defendant elected to offer any proof, whereupon the Trial Court granted the motion and dismissed the case, stating the dismissal “can be done strictly on the accord and satisfaction which was reached between the landowner and the government”. The Court further found that the “road, has, in effect, been completed. Sufficient work has been done on it. Whether or not to accept the road as a County road is a matter within the authority and discretion of the County Commission. They

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The County legislative bodies are empowered to overrule decisions of planning commissions. T.C.A. §13-3-404.

chose to do that. I do think that that completed the agreement.”

Our review in civil actions tried without a jury is *de novo* upon the record of the Trial Court, accompanied by a presumption of the correctness of the Trial Court’s findings, unless the evidence preponderates otherwise. T.R.A.P. Rule 13(d).

Where two parties have a dispute, they may settle that dispute through an accord and satisfaction. An accord is “an agreement whereby one of the parties undertakes to give or perform, and the other to accept in satisfaction of a claim, liquidated or in dispute, and arising either from contract or from tort, something other than or different from what he is or considers himself entitled to; and a satisfaction is the execution of such agreement.” *R.J. Betterton Mgmt. Serv. v. Whittemore*, 733 S.W.2d 880, 882 (Tenn. App. 1987); quoting *Lytle v. Clopton*, 149 Tenn. 655, 663-664 (1924). Further:

[t]o constitute a valid accord and satisfaction it is also essential that what is given or agreed to be performed shall be offered as a satisfaction and extinction of the original demand. . . . Both the giving and the acceptance in satisfaction are essential elements, and if they be lacking there can be no accord and satisfaction. The intention of the parties, which is of course controlling, must be determined from all the circumstances attending the transaction.

Id.

An accord and satisfaction “is established by the intentions of the parties at the time of the transaction, and the issue is a question of fact to be determined by the trier of fact.” *Helms v. Weaver*, 70 S.W.2d 552, 553-554 (Tenn. App. 1989). We have noted that “[c]ontracts to compromise legal claims have long been enforced by the Courts.” *Fort Sanders Regional Medical Center v. Collins*, 1992 WL 184682, at *1 (Ct. App. Aug. 1992).

The Banks concede there was an accord, but insist there was no satisfaction. They argue that the accord was the agreement between the Banks and the County for the Banks to deed the right-of-way to the County and pay the County the

sum of \$6,000.00, and the County was to “complete the roadway”. But the County failed to meet this obligation.

Polk County counters that the road has been completed, and that it has no further obligation. It relies on the language in the deed to the County and settlement proposal of Banks stating that acceptance would result in a full and final settlement of the claims against the County. Also, that the actions of the Road Commissioner, construction of the road without following procedures, constituted an *ultra vires* act, and assuming *arguendo* that these actions were *ultra vires*, such action did give rise to a dispute which the County and the Banks had the right to settle through an accord and satisfaction. See *Lindsey v. Lindsey*, 930 S.W.2d 553 (Tenn. App. 1966); *Helms v. Weaver*, 770 S.W.2d 552 (Tenn. App. 1989); and *R.J. Betterton Mgmt. Serv. V. Whittemore*, 733 S.W.2d 880 (Tenn. App. 1987). Neither party disputes the fact that McGee did not follow proper procedures in building the road, and they attempted to reach accord and satisfaction through the proposal presented by the Banks. The only dispute between the parties is whether the County completed the roadway as required by the proposal.

Banks testified that he contemplated a paved roadway that met County specifications for a County road, and that McGee told him he would pave the road. McGee testified that the proposal by the Banks did not include paving the road, but that the road did need more rock on it, which was done. He stated that there were many gravel roads in Polk County, and that this is not the “worst one.” Firestone testified that he was not certain exactly what the proposal was when it was first submitted to the Commission, but it is undisputed that the County accepted the road as a County road in January, 1998. The agreement between the parties contained an obligation that the County complete the roadway. The Trial Court expressly found that the road had been completed, and that sufficient work had been done on the road to complete, and found that there was an accord and satisfaction. The evidence is

disputed regarding what the language “completion of the roadway” meant, but the road was constructed and the County adopted it into its road system in its then condition. On the disputed evidence in this record, and in our deference to the Trial Judge in assessing the credibility of the witnesses, we cannot say the evidence preponderates against the Trial Court’s finding of fact that the parties reached an accord and satisfaction. T.R.A.P. Rule 13(d).

Upon this finding, we find it unnecessary to address other arguments or issues, and affirm the Trial Judge.

The cause is remanded, with the cost of the appeal assessed to appellants.

Herschel P. Franks, J.

CONCUR:

Houston M. Goddard, P.J.

Don T. McMurray, J.